

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 8, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

WYO-BEN, INC.

Docket No. WEST 2023-0320¹
A.C. No. 48-00612-577272

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

ORDER

BY: Rajkovich, Chair, Jordan and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On July 20, 2023, the Commission received from Wyo-Ben, Inc., a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

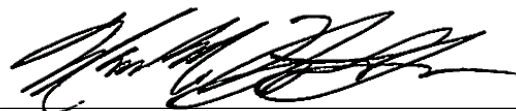
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

¹ The first issuance of this order contained an incorrect docket number in the caption (Docket No. WEST 2023-0230). This amended order corrects the clerical error.

Here, the underlying citation at issue was timely contested on April 26, 2023, and the contest proceeding was docketed before the Commission (Docket No. WEST 2023-0212). Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed penalty assessment for the citation was subsequently delivered to the operator on May 22, 2023, and became a final order of the Commission on June 22, 2023.

According to Wyo-Ben, proposed penalty assessments are normally received by the operator’s Vice President of Operations and forwarded to outside counsel. The operator asserts that, when it appeared the penalty assessment for the contested citation had not yet arrived by mid-July, the Vice President checked MSHA’s Mine Data Retrieval System (“MDRS”) and learned that the assessment had already become final. The Vice President and outside counsel looked for the assessment but were unable to locate it, or to determine where or how it had been delivered. The Secretary opposes the request to reopen. She notes that the assessment was both delivered to and retrieved from the operator’s address of record, and asserts that the operator’s inability to explain what happened to the assessment after retrieval indicates an inadequate or unreliable internal processing system.

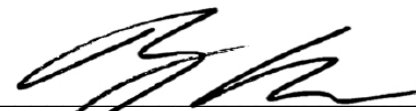
Having reviewed Wyo-Ben’s request and the Secretary’s response, we find that the operator has demonstrated that its failure to timely file a contest of the proposed penalty was the result of a mistake. The operator demonstrated that the mistake was made in good faith by proactively reviewing MSHA’s MDRS and promptly moving to reopen upon discovery of the error.² The operator was also timely in its filing of a notice of contest of Citation No. 9721410, and has no history of untimely contests. In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

² The Commission has held that “[m]otions to reopen received within 30 days of an operator’s receipt of its first notice from MSHA that it has failed to timely file a notice of contest of a proposed civil penalty will be presumptively considered as having been filed within a reasonable amount of time.” *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, the proposed penalty assessment became a final order of the Commission on June 22, 2023, and the operator filed its motion to reopen on July 20, 2023.

Commissioner Marvit, dissenting:

I write to disagree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, 46 FMSHRC 965 (Dec. 2024), I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC 975, 977 (Dec. 2024) (citing *Hancock Materials, Inc.*, 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the Commission's orders became final under the language of section 105(a). The Majority, however, votes to reopen the case. The Mine Act has not granted us authority to reconsider final orders of the Commission as I set out more fully in *Explosive Contractors*. To the contrary, it has limited our authority to do so. Therefore, I respectfully dissent and would deny reopening.

A handwritten signature in black ink, appearing to read 'M. Marvit', is positioned above a horizontal line.

Moshe Z. Marvit, Commissioner

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